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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,476	07/01/2002	Jorg Peter Schur	von Kreislser.021	3376

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DANN, DORFMAN, HERRELL & SKILLMAN  
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EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 08/01/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10 069476

Applicant(s)

Schuy

Examiner

MIC Levy

Group Art Unit

16/6

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 2/25/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-52 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 1-52 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

This application contains the following species of the generic invention, and the following inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1. In accordance with 37 CFR 1.499 applicants are required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1-26, 51, 52 drawn to preharvest plant protection

Group II, claims 1-26, 51, 52 drawn to post harvest protection

Group III, claims 27-48, drawn to preharvest distribution

Group IV, claims 27-48, drawn to post harvest distribution

Group V, claims 49-50, drawn to insecticides

Claims 1-26, 49-52 are generic to a plurality of disclosed patentably distinct species comprising one ultimate species of each of :

(1) The lipophilic agent or agents for example, benzyl alcohol, as of claim 4, if 2 lipophilic agents are chosen, then, for example, the polyphenol, tannin, of claim 22 with benzyl alcohol could be elected.

(2) The hydrophilic agent: for example, the isopropyl alcohol, of claim 5, or the furfural of claim 6

(3) The ultimate further added Gras agent of claim 14

(4) The ultimate species of claim 24: the emulsifier compound, or stabilizer compound etc.

(5) The method of application: spraying or immersion

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(6) Ultimate crop species: for example cotton, of claim 51

(7) Ultimate microbe species: the mold, virus, parasite, fungus, yeast or bacterial genus

Claims 27-48 are generic to a plurality of disclosed patentably distinct species comprising the ultimate species of each of:

(1) the 2 Gras agents; for example, from claim 39, ethyl alcohol and isopropyl alcohol.

(2) the further Gras alcohol, of claim 39, such as glycerol

(3) the polyphenol, if elected, as of the compounds, such as catechol-usnic acid, disclosed in claim 39

(4) the acid, if elected, as of claim 39 compounds acetic acid through tanic acid.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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The inventions and species listed as Groups I-V do not relate to a single inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2 they lack the same or corresponding special technical features for the following reasons:

The special technical features are:

Determination of pests of concern, amount, and anatomical portion of plant to be treated and protected. Pre-harvest treatment would not guarantee post harvest protection, the pest microbes would differ, as would the plant part needing treatment –The leaves, pre harvest; the fruit, post harvest, the methods of applying to leaves not protecting fruit. No special technical features of the instant invention have been shown, by applying the possible array of any combination and permutation of Gras compounds and auxiliaries.

Since this application is filed under Rule 371, the legal authority is PCT Rule 13.2, Annex B, part 1(f) "Markush Practice"; PCT Rule 13 and 35 U.S.C. § 372, rather than 35 U.S.C. § 121.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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Because the above restriction/election requirement is complex, a telephone call to applicant's agent to request an oral election was not made. See M.P.E.P. Sec. 812.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4556 for regular communications and 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd  
July 24, 2003



NEIL S. LEVY  
PRIMARY EXAMINER